



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

August 12, 2016

BY ECF AND HAND

The Honorable William H. Pauley, III
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: United States v. James Capers et al.,
15 Cr. 607 (WHP)**

Dear Judge Pauley:

Defendants James Capers and Christian McKnight have filed suppression motions in this case. Capers seeks to suppress a pretrial identification of him on the ground that it was unduly suggestive under *United States v. Wade*, 388 U.S. 218 (1967). McKnight has moved to suppress various statements and physical evidence. No other defendant in this case filed a motion that would necessitate an evidentiary hearing. The Court previously ordered that any hearing on the motions shall take place on Monday, August 15.

With respect to the *Wade* motion filed by defendant Capers, although the Government believes that no hearing is necessary, the parties are in agreement that, if the Court were to require a hearing, that hearing can and should take place immediately before or during trial. This approach will both conserve judicial resources and protect the witness's safety by ensuring that the witness's identity is not disclosed earlier than necessary.

With respect to the motions filed by defendant McKnight, the parties are in agreement that a pre-trial evidentiary hearing is necessary, although they disagree about the scope of the hearing. Because, however, the parties are currently engaged in plea discussions that may make the hearing unnecessary, the parties request that the hearing date be adjourned 30 days to allow these talks to conclude.

We have been informed by the Court that, in the absence of hearing, it is not necessary to hold a conference on August 15. Accordingly, in the event the adjournments are granted, the Government requests that the Court exclude time from August 15 until November 28, 2016, the date that jury selection is scheduled to begin in this case. The exclusion will serve the ends of justice, in that it will permit the defendants to continue their review of the discovery and to prepare for trial, and will allow the parties to continue discussions regarding potential pre-trial dispositions of the charges in this case. The Government submits that, for this reason, the

cc: all counsel (by ECF)